

CLEAN WATER ACT (CWA)

2-51. Class I Administrative Penalty Actions

1. AUTHORITY. Pursuant to the Clean Water Act, as amended, (CWA) the authority to:

- a. Act as the complainant in a Class I administrative penalty action under the CWA.
- b. Conduct proceedings, recommend the form of final Agency action, issue subpoenas and perform all the presiding officer functions set forth in applicable Agency guidance or regulations governing the administration of Class I administrative penalty actions under the CWA.
- c. Issue an order on consent between the Agency and a respondent resulting from the initiation of a Class I administrative penalty action under the CWA.
- d. Act as the deciding official in a contested or default Class I administrative penalty action under the CWA, and to assess a penalty in such a proceeding.

2. TO WHOM DELEGATED.

a. The authorities in 1.a. and 1.c. are delegated to the Directors, Environmental Assessment and Innovation Division (EAID), Water Protection Division (WPD), Hazardous Site Cleanup Division (HSCD), Office of Enforcement, Compliance, and Environmental Justice (OECEJ); Associate Division Director, Office of Enforcement, HSCD; and the Associate Division Director, ~~Office of Compliance and Enforcement~~ Office of NPDES Permits and Enforcement, WPD.

b. The authorities in 1.b. and 1.d. are delegated to the Regional Judicial and Presiding Officer.

c. The Regional Counsel, Region III, has redelegated the authority to represent the complainant before a presiding officer in a Class I administrative penalty proceeding under the CWA to Assistant Regional Counsels.

3. LIMITATIONS.

a. The Regional Judicial and Presiding Officer may not be employed by any program office directly associated with the type of violation at issue in the involved proceeding.

b. The Director of EAID may use the delegated authorities only to implement Sections 301, 404 and 308.

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2-51. Class I Administrative Penalty Actions (cont.)

3. LIMITATIONS. (cont)

c. The WPD delegates may use these authorities only to implement Sections 301, 302, 306, 307, 308, 318, 402, and 405.

d. The HSCD delegates may use these authorities only under Sections 301, 308 and 311.

e. The delegates listed in 2.a. must consult with the Regional Counsel or his/her designee to obtain concurrence on the legal sufficiency of documents before exercising the authorities in 1.a. and 1.c.

f. The Director, OECEJ, may exercise these authorities only in multi-media cases.

g. The Director, OECEJ, must consult with the WPD, EAID, or HSCD delegates, respectively, before exercising these authorities.

4. REDELEGATION AUTHORITY.

a. The authorities in 1.a and 1.c. may not be redelegated without formal amendment.

b. The authorities in 1.b. and 1.d. may not be redelegated.

5. ADDITIONAL REFERENCES.

a. Section 309 of the Clean Water Act, 33 U.S.C. ' 1319, as amended by the Water Quality Act of 1987.

b. Section 311 of the Clean Water Act, 33 U.S.C. ' 1321, as amended by the Oil Pollution Act of 1990.

c. Non-APA Consolidated Rules of Practice for Administrative Assessment of Civil Penalties, Proposed Rule, 56 Fed. Reg. 29, 996 (July 1, 1991) (to be codified at 40 C.F.R. part 28); agency guidance or regulations governing Class I administrative penalty actions under the Clean Water Act.

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2-51. Class I Administrative Penalty Actions (cont.)

5. ADDITIONAL REFERENCES. (cont)

d. The authority to A[r]epresent the complainant before a presiding officer in a Class I administrative penalty proceeding under the CWA@ in EPA Delegation 2-51, & 1.c. (Oct 16, 1991) and delegated under paragraph 2.c to the Assistant Administrator for Enforcement, has been redelegated to the Regional Counsels by the attached memorandum dated October 29, 1991. The Regional Counsel, Region III, has redelegated this authority to Assistant Regional Counsels.

e. EPA=s Consolidated Rules of Practice Governing the Administrative Assessment of Air Penalties, Issuance of Compliance or Corrective Actions Orders, and the Revocation, Termination or Suspension of Permits, 40 CFR Part 22, published at 64 Fed. Reg. 40137 (July 23, 1999).

6. SUPERSESSSION. Delegations Manual, CWA, Regional Delegation 2-51. Class I Administrative Penalty Actions, 1200 TN RIII-147 (August 26, 2002).

Date 9/1/05

/s/ James W. Newsom for
Donald S. Welsh
Regional Administrator